

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CLAYTON THOMAS	:	CIVIL ACTION
	:	
v.	:	NO. 02-CV-4778
	:	
BEN VARNER, <u>et al.</u>	:	

ORDER

AND NOW, this 6th day of October, 2006, upon consideration of Petitioner's Motion for Release (docket no. 57) and Respondents' Opposition thereto (docket no. 58), it is **ORDERED** that Petitioner shall be released from custody within 30 days unless Respondents obtain a stay of this Order from the United States Court of Appeals for the Third Circuit or the United States Supreme Court.¹

BY THE COURT:

S/ BRUCE W. KAUFFMAN
BRUCE W. KAUFFMAN, J.

¹On June 1, 2004, this Court issued an Order granting Petitioner the writ of habeas corpus and stayed the Order pending appeal by Respondents. On November 4, 2005, the United States Court of Appeals for the Third Circuit denied Respondents' appeal and affirmed the grant of habeas corpus. The Third Circuit remanded the case to this Court with instructions that an order be entered issuing the writ and "directing that Thomas be re-tried within one hundred and eighty (180) days or be released." Pursuant to the Third Circuit's instructions, this Court entered the Order on March 10, 2006. Thus, the 180 day period expired on September 8, 2006. Respondents have petitioned the United States Supreme Court for a writ of certiorari to appeal the Third Circuit's decision and seek to avoid retrying Petitioner until the Supreme Court has completed its review. However, as of yet, they have not sought a stay of the Third Circuit's Order from either the Third Circuit or the United States Supreme Court.